

Squire, Sanders & Dempsey L.L.P.
Nathan Lane III (State Bar # 50961)
Joseph A. Meckes (State Bar # 190279)
One Maritime Plaza, Suite 300
San Francisco, California 94111-3492
Telephone: +1.415.954.0200
Facsimile: +1.415.393.9887
Email: NLane@ssd.com
JMeckes@ssd.com

Attorneys for Plaintiff
IZUMI OHKUBO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IZUMI OHKUBO,

Plaintiff,

vs.

ANTARA BIOSCIENCES, INC.,
MARC R. LABGOLD and DANA
ICHNOTSUBO,

Defendants.

Case No. C07 06354 JW

**DECLARATION OF KENICHIRO
KAWADA**

I, Kenichiro Kawada, declare as follows:

1. I am an attorney at law admitted to practice in Japan (a “bengoshi” in Japanese). I graduated from the Legal Training and Research Institute in 2003 and am registered with the Japan Federation of Bar Associations. I am associated with the Tokyo office of Squire, Sanders & Dempsey L.L.P. I am making this declaration based on my own personal knowledge and, if called upon to do so, could and would testify as set forth herein.

2. I am one of the lawyers representing Izumi Ohkubo in a lawsuit pending in the Tokyo District Court, captioned Izumi Ohkubo, et al. vs. Euris Japan (“*Kabushiki Kaisha Euris Genomics*”, hereinafter “Euris Japan”), *Heisei* 18 (2006) (*wa*) No. 29516. This lawsuit was originally filed in 2006 and is well advanced. As is customary in Japanese litigation, the case has involved one (1) hearing (“*Koto Benron*” in Japanese) and eight (8) preparatory hearings

1 (“*Benron Jyunbi Tetsuzuki*” in Japanese) attended by the lawyers for the parties. In connection
2 with the hearing and the preparatory hearings, the lawyers submitted briefs and evidence in
3 support of the positions of their respective clients. At the most recent preparatory hearing in the
4 case, held on March 10, 2008, Hon. Akiyo Fukui, the judge handling the case, advised the parties
5 that she would probably hold one or two more preparatory hearings, after which a hearing would
6 be held for examination of witnesses if necessary. Based on this advice of the judge and my
7 experience as an attorney admitted to practice in Japan, I expect that a final hearing would be held
8 around September 2008, after which the case would be submitted for decision by the court, with a
9 decision likely by the end of 2008.

10 3. In the Tokyo District Court case, defendant Eurus Japan has taken positions that
11 appear to me to differ substantially from the positions now taken by Antara Biosciences, Inc.,
12 Marc R. Labgold and Dana Ichinotsubo in their Motion to Dismiss Complaint in *Ohkubo v.*
13 *Antara Biosciences, Inc.* (“Motion”), which I have personally reviewed.

14 4. In the Motion, I understand that the defendants claim that the case pending in the
15 U.S. should be litigated in Japan and cite a clause in the Investment Contract attached as Exhibit
16 C to the complaint in support of their position. In contrast, Eurus Japan seems to have taken the
17 position in the Tokyo District Court case that not all provisions of the Investment Contract are
18 enforceable. In particular, Eurus Japan has never suggested to the Tokyo District Court that
19 Article 9 of the Investment Contract was an enforceable provision that required Mr. Ohkubo to
20 litigate his claims against Antara and Messrs. Ichinotsubo and Labgold only in Japan. Indeed, in
21 an official presentation to the court on March 10, 2008 in the Tokyo District Court Action, Eurus
22 Japan advised the court that requested information about Antara could only be made available in
23 the U.S. litigation pursuant to confidentiality obligations to be undertaken by the parties in the
24 U.S. litigation. Consequently, Eurus Japan refused to provide the requested information because
25 issues relating to that information could only be addressed between the parties in the U.S.
26 litigation pending in this Court.

27 5. As part of their evidence filed in the Tokyo District Court, Eurus Japan submitted
28 an Advisory Agreement entered into on April 17, 2006, by and between Antara Biosciences, Inc.

1 and JAIC Securities Co., Ltd. Article 6 of that agreement provides:

2 This Agreement shall be governed by, and construed in
3 accordance with the laws of Japan. The Tokyo District
4 Court shall have exclusive jurisdiction over any and all
disputes arising in connection with this Agreement.

5 A true and correct copy of this agreement is attached hereto as Exhibit A.

6 6. I understand from the Motion that the three defendants purport to agree to submit
7 to jurisdiction in Japan if Mr. Ohkubo were to file a lawsuit against them there. If such a lawsuit
8 were filed, jurisdiction could not be obtained over the defendants unless the complaint was
9 properly served upon them. This would require first that a complaint be prepared in conformity
10 with Japanese substantive and procedural requirements, that the complaint be translated into
11 English and then delivered to the defendants in accordance with the Hague Convention on the
12 Service Abroad of Judicial and Extrajudicial Documents, to which both the United States and
13 Japan are parties. Based on the authoritative work of reference titled "Procedure Manual of
14 International Judicial Assistance regarding Civil Case" (*"Minji Jiken Ni Kansuru Kokusai Shiho*
15 *Kyojyo Tetsuzuki Manual"* in Japanese) published under the editorship of Civil Affairs Bureau of
16 General Secretariat of the Supreme Court of Japan and my personal knowledge of how long it
17 would take to prepare and file a proper Japanese complaint against the defendants in the case
18 here, I estimate that service of process would not be made until at least four (4) months from the
19 time preparation of a complaint began. Only after the complaint has been served and the
20 defendants have appeared in the Tokyo District Court would it be possible to consider whether
21 the pending case against Eurus Japan could somehow be coordinated or consolidated with a case
22 against Antara and Messrs. Labgold and Ichinotsubo. I believe it would be most unlikely that any
23 such coordination or consolidation would occur. First, the Tokyo District Court case against
24 Eurus Japan is almost completed and may well be finished before any hearing in a new case
25 against Antara and the individuals. Second, consolidation or coordination is by no means
26 automatic in the Tokyo District Court, and in this case where Antara and the individual
27 defendants are apparently taking very different positions from Eurus Japan, I doubt that the
28 Tokyo District Court would order coordination or consolidation.

